There was not "independency between cause 1 (the accident) and cause 2" the diseases from which the assured was suffering, and the defendant would not be liable even if proviso (d) were omitted.

On this ground too the action fails and is dismissed with costs.

Action dismissed.

Solicitor for plaintiff—*R. C. H. Lim.*

Solicitors for defendants—

Donaldson & Burkinshaw.

[ORIGINAL CIVIL JURISDICTION]

MANNING, J.

May 18, 1939.

RE P. K. KASSIM SERANG

(SINGAPORE BANKRUPTCY No. 41 of 1939)

Bankruptcy—Refusal to make Receiving Order—"Sufficient cause"—Sub-contractor for labour—Probability of Debtors earning capacity being destroyed—Antecedent examination of Debtor on Judgment Summons—No other creditors—Bankruptcy Ordinance (Cap. 45), sect. 6 (3).—Civil Procedure Code sect. 658 seq.—Labour Ordinance (Cap. 69), sects. 42, 96.

The Petitioning-Creditor, a former foreman of works employed by the Debtor, having recovered judgment against him in February 1938 in the District Court for unpaid wages, then garnished certain moneys due to the Debtor; but these moneys were by consent ordered by the District Court in September 1938 to be paid out to the Controller of Labour for distribution **pari passu** among certain labourers, on whose behalf the Controller had also recovered judgment against the Debtor under the Labour Ordinance (Cap. 69). The balance due to such labourers upon the latter judgment had then been paid off by the Debtor himself by small instalments. The Petitioning Creditor had then taken out a judgment-summons against the Debtor under sect. 658, Civil Procedure Code, and the District Court at the conclusion of the examination thereunder on the 1st November 1938 had made no order. The Petitioning creditor then, in January 1939, served the Debtor with a Bankruptcy Notice, and that not being complied with, in April 1939, with a Bankruptcy Petition. The Debtor did not deny the allegations in the Petition, but, by affidavit made jointly by himself and his brother-in-law (who was also the Petitioning Creditor's uncle) alleged that he had no property nor expectation of any, and no creditors but the labourers that he was bound to employ for execution of his contracts, and that the making of a Receiving Order would prevent his obtaining any further contracts or recruiting any labourers. He had offered to pay the Petitioning Creditor by small instalments, but his offer had been declined.

Held, that a Receiving Order would destroy the assets of, and entail hardship to, the Debtor, and there was therefore "sufficient cause" within the meaning of sect. 6 (3) of the Bankruptcy Ordinance for not making such order.

In re Otway (1895) 1 Q.B. 812: **In re Betts** (1897) 1 Q.B. 50; **In re Emma Somers** (1897) 4 Mans. 227: re **Seah Peng Leat**, (1939) Mal. L.J., 67, followed.

Creditor's Bankruptcy Petition, alleging as "an act of bankruptcy" the Debtor's failure to comply with the requirements of a Bankruptcy Notice which was served on him the 25th January 1939 and was founded on a District Court Judgment dated the 12th February 1938 awarding him $129, for wages as "Serang" or foreman of works employed by the Debtor, and $20.75 for costs.

The Debtor did not dispute the allegations in the Petition, but prayed that no order be made thereon, because the history of events since the date of the judgment, as deposed to in his and his brother-in-law's joint-affidavit filed the 10th May 1939, as follows, constituted "sufficient cause," under sect. 6 (3), Bankruptcy Ordinance (Cap. 45).

"And first I, the said P. K. Kassim Serang for myself say that—

1. "I am aged 36 years, and have a wife and child.

2. "The Petitioning Creditor's judgment dated the 12th February 1938, referred to in paragraph 2 of the Bankruptcy Petition, was in respect of wages as my "serang," or foreman, in a pile-driving sub-contract at North Boat Quay, Singapore. In pursuance of the said judgment, he garnished certain moneys (about $110) due to me by Messrs. Seng Hup & Co. of No. 307 Tanjong Pagar Road. The Extra Assistant Controller of Labour, on the other hand, claimed the said moneys on behalf of 46 of my labourers for whom he had recovered judgment on the 24th August 1938 in District Court Summons No. 2584/1938 for $184.97. At the trial of an Interpleader issue on the 10th September 1938, the learned District Judge by consent ordered the said $110 in Court to be paid out to the said Extra Assistant Controller of Labour for distribution rateably among the said 46 labourers by virtue of their priority under sects. 42 and 96, Labour Ordinance (Cap. 69).

3. "I have thereafter with the assistance of my brother-in-law, the Second Deponent, paid off piece-meal the balance $74.97 due to the said labourers.

4. "On the 4th day of October, and 1st day of November, 1938, the Petitioning Creditor examined me on a judgment-debtor Summons (No. 611) founded upon his judgment aforesaid: and the said District Judge, after hearing the evidence, was pleased to make no order thereon.

5. "I have no assets, nor expectation of any, other than what little I can earn from undertaking occasional sub-contracts for the supply of labour to building contractors. The profit, if any, on such sub-contracts is

extremely small and precarious, owing to their being invariably allotted at a lump sum or flat rate, which has to be calculated by anticipation. In fact in many of such sub-contracts I have owing to circumstances supervening during the progress of the contracts sustained a loss and have had to pay my labourers more than I actually received from the principal contractors. If Receiving and Adjudication Orders be made against me, moreover, even this precarious means of livelihood will end, as the discredit and disrepute arising from bankruptcy will prevent me, on the one hand, from obtaining any further sub-contracts, and, on the other, from recruiting the requisite labourers.

6. "I and my said brother-in-law have offered to pay off the Petitioning Creditor's claim by small instalments, in the same manner as we paid off the labourers mentioned in paragraph 3 hereof, but the Petitioning Creditor has declined such offers.

"And I, the said PANNA AHNA MUSA for myself do say that—

7. "Both the Petitioning Creditor and the Debtor (First Deponent) are my nephew and brother-in-law respectively.

8. "I am well acquainted with the financial circumstances and affairs of the First Deponent ever since he arrived in Singapore about 20 years ago. The facts hereinbefore deposed to in paragraphs 5 and 6 are, within my knowledge, true and correct."

The Petitioning Creditor, in reply, filed on the 12th May 1939 a counter-affidavit, of which the material portions were as follows:—

1. Since the Petition herein was issued, the above-named debtor has not paid anything to account of the amount claimed by me nor did he endeavour to pay it by instalments.

2. With reference to the paragraph 3 of the Debtor and Pana Musa, the latter has no business of his own and is heavily indebted to persons.

3. With regard to paragraphs 5 and 6 of the affidavit, the debtor has landed property in his Native place in India.

4. The debtor held a contract with the Engineering Department of the Asiatic Petroleum Co. S.S. Ltd., Singapore and I understood that he withdrew his money in the month of April 1939.

De Mello for the Debtor.—By the words "sufficient cause", sect. 6 (3) of the Ordinance confers a large discretion upon the Court, who will hesitate to make a Receiving Order where, by operation of law, it would destroy the Debtor's assets, or, by the very force of circumstances cause him hardship by militating against his earning capacity: *In re Otway* (1895) 1 Q.B. 812; *in re Betts* (1897) 1 Q.B. 50; *in re Emma Somers* (1897), 4 Mans. 227; *re Seah Peng Liat* Malayan Law Journal April 1939, p. 67. That he has no property or any reasonable prospect or probability of any has been demonstrated by the fact that no order was made on the Judgment Summons issued by the Creditor in September 1938 in execution of the judgment of February 1938. The Creditor after waiting another 6 months has begun these proceedings. It would be as "vain" a thing here to make a Receiving Order, as it was held to be after a previous sequestration-order in *Re Robinson*, 22 Ch. D. 816. The Debtor does not seek to evade payment of his debt, but wants reasonable facilities; the Creditor, however, prefers to be harsh and vindictive. The allegation that the Debtor has property in India or other creditors than his labourers (who have a preferential claim) is denied, as is indeed apparent from the fact that the creditor has not set forth any particulars or description. The debtor's labourers who have a preferential claim under the Labour Ordinance have always been duly paid.

Osborne-Jones for the Petitioning Creditor.—The allegation of the Petition not being disputed the creditor is entitled to a Receiving Order. In addition to the property in India, the Official Assignee may, with the machinery of the Bankruptcy Ordinance, succeed in discovering other property and creditors.

Cur. Adv. Vult.

Manning, J.—In this case the debtor admits the facts set out in the affidavit of the Petitioning Creditor, but contends that a Receiving Order should not be made against him on certain grounds. These grounds are set out in an affidavit and are that the debtor has no assets, nor any expectation of any, other than certain amounts which he may earn from contracts; that such amounts are small and precarious; and that the effect of a Receiving Order would be to destroy this means of livelihood. The debtor further says that he offered to pay the debt by instalments, and that this offer has been refused by the Petitioning Creditor. He further states that he has been examined on a Judgment Summons, and that no order was made against him. The debtor's brother-in-law has joined in the affidavit and vouched for the truth of the facts deposed to.

The Petitioning Creditor has filed an affidavit in reply. He does not deny the debtor's statement as to his means of livelihood, or that he offered to pay by instalments. He says the debtor made no endeavour to pay by instalments, but this would naturally follow

if the offer was refused. He says that the debtor had landed property in India and last month drew some money as a result of a contract.

The allegation as to property in India is too vague, and I leave it out of consideration. The main facts stated in the debtor's application must be assumed to be correct. Mr. de Mello, who appeared on his behalf, cited authorities in his favour. These were *in re Otway*, 1895, 1 Q.B. 812; *in re Betts*, 1897, 1 Q.B. 50; *in re Emma Somers*, 4 Manson's 227; and *re Seah Peng Liat*, reported at p. 67 of the "Malayan Law Journal" for April 1939. The latter case is a decision of this Court and the first three authorities cited were analysed by McElwaine C.J., in his judgment. The learned Chief Justice rejected the Petition on the ground that an adjudication would be of no real value to the creditors and might cause very serious hardship to the debtor.

The question is always one for the exercise of the Court's discretion—but it may be safely said that the discretion would always be exercised if the making of a receiving order would cause serious hardship to the debtor without being of any advantage to the creditor. The procedure in Bankruptcy is not meant to be oppressive. In the present case, a Receiving Order will cause the debtor's means of livelihood to be more precarious than it is now, and render it unlikely that the creditor will recover any part of the debt. I think Mr. de Mello has made out his case against this petition, and it will accordingly be dismissed, with costs.

Petition dismissed with costs.

Solicitor for Petitioning Creditor—*D. G. Osborne-Jones.*

Solicitor for Debtor—*A de Mello.*

[ORIGINAL CIVIL JURISDICTION]

MANNING, J.

June 2, 1939.

IN THE ESTATE OF SYED ABDULLAH BIN ABDULRAHMAN BIN SAHIL, DECEASED.

(SINGAPORE ORIGINATING SUMMONS No. 61 1939)

Grant of Letters of Administration to attorney of three next of kin—death of one of such next of kin —Grant of Letters of Administration not thereby revoked.

Deceased died intestate in 1915. Grant of Letters of Administration was made to attorney of widow. Widow and administrator both died. The three surviving next of kin of the deceased gave a power of attorney to plaintiff to apply for a Grant of Letters of Administration de bonis non and such a Grant was duly made in 1936 to the plaintiff as such attorney. Thereafter one of the next of kin, grantors of the power of attorney, died. The power of attorney made no reference to survivorship amongst the principals.

Held, the Grant of Letters of Administration de bonis non in favour of the plaintiff was not revoked by the death of one of the grantors of the power of attorney.

Munro for the plaintiff referred to *In re Dinshaw* (1930) P. 180 and *Williams* on "Executors" 12th Edn. at p. 358.

Defendant, one of the next of kin of the deceased, did not appear.

Cur. Adv. Vult.

Manning, J.—The first question asked in this Originating Summons raises an interesting point. The abovenamed deceased died intestate on 21st October 1915, and letters of administration were granted to one Syed Alwee as attorney of the widow of the deceased. The deceased left one son and four daughters.

Syed Alwee died on the 11th October 1932. Nothing appears to have been done till the year 1936. At that date the widow, the son and one daughter had died. The remaining three daughters appointed the plaintiff their attorney on the 16th March 1936, and on the 6th July 1936 the plaintiff was granted letters of administration *de bonis non* to the estate of the deceased.

One of the these three daughters died on the 30th December 1936, and I am now asked to determine whether in view of this event the letters of administration granted to the plaintiff are still in force.

I have not been referred to, nor have I been able to find, any authority directly in point. Mr. Munro cited *In the Estate of Dinshaw* 1930 P. 180. In that case letters of administration with the will annexed had been granted to one Vincent as the attorney of two executors. One of the executors died and the surviving executor made a fresh power of attorney to Vincent and another. It was held, on a motion by the surviving executor, that the original